

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM LANCASTER COUNTY

HONORABLE JEFFREY YOUNG

2007-GS-29-1338

2007-GS-29-1339

Jabarrie Brown, # 350182, Appellant,

vs.

State of South Carolina..... Respondent.

BRIEF OF APPELLANT
(PRO-SE)

Jabarrie Brown, 350182
Evans C.I. F-3-A-283 (Cheraw)
610 Hwy 9 West
Bennettsville, SC 29512
(APPELLANT PRO-SE:)

South Carolina Attorney
General's Office
Alan Wilson, Att. General
P.O. Box 11549
Columbia, SC 29211
(ATTORNEY FOR RESPONDENT:)

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QUESTION PRESENTED

I.

WAS THE APPELLANT ENTITLED TO A LESSER-INCLUDED OFFENSE CHARGE,
WHERE THERE WAS EVIDENCE THAT NO WEAPON WAS USED IN THE ALLEGED
CRIME ?

STATEMENT OF THE CASE

(The Appellant concurs with the Statement of the Case of the
Initial Brief of Appellant)

ISSUE ONE

As discussed by Trial Counsel, There was testimony that the weapon was not used and had appellant been given proper Notice of the trial he would have testified that a weapon was not used. When a Criminal Defendant pleads Not guilty and goes to trial it is implied that he is denying the act in question. This is further compounded when a criminal defendant proceeds to trial without notice and is not able to testify. Further, when a criminal defendant pleads not-guilty and the case proceeds to trial it is presumed that he is totally denying the acts in question. When a trial Judge fails to charge a jury instruction based on the Defense theory that would have been supported by the evidence, i.e. when a criminal defendant pleads not guilty and stands trial, the criminal defendant is entitled to a lesser included charge of CDV see U.S. v. Wolny 133 F.3d. 758 (10th Cir 1998). Therefore this Court should reverse the CDVHAN to the Trial Court for a New Trial with a lesser-included charge of CDV.

CONCLUSION

Based on the foregoing, the Appellant Prays that this Court Reverse the CDVHAN conviction and Remand for a new Trial with a CDV Charge to be included for the trial Courts consideration. The Appellant Submits the above to the Court for their Consideration.

Respectfully Submitting,

Jabarrie Brown

This 19th Day of May, 2013.

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Page 10 line 21-23 Juror 55, Pamela Hasset was in a abusive relationship

Page 11 line 12-13 Derek Smith was a victim of an assault and robbery, so they couldn't be fair

Maxine Stradford Juror 134 knows Courtney Mackey
And myself Courtney Mackey's cousin, my friend Kill
killed Maxine Stradford's son, Delaney vs State.

269 S.C. 555, 556, 238 S.E.2d 679, (1977)

The Court also held that juror misconduct discovered post-trial is not newly discovered evidence but is a separate basis for a new trial. Provided a claim is timely raised

A new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the peremptory challenges.

A gun was never use Page 58 line 8 it was like up near my head, but it wasn't touching.

Page 69 line 10-11 He never struck you? No he just pushed me that's it.

page 96 23-1 But she didn't have any injuries on her right? Just kind of clothes all over the place but nothing i could see. State vs Brown

When the state fails to present sufficient proof of all elements of the offense, a conviction must be reversed and a judgment for the defendant must be rendered, one reason a defendant is entitled to an instruction on a lesser included offense when supported by the evidence it to

prevent a jury, when the defendant plainly is guilty of some offense, from finding the defendant guilty of the greater offense, because the only alternative is to let him walk free.

respectfully submitting

Jabarrie Brown 350182

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PROOF OF SERVICE

I Jabarrie Brown, certify that I have served my (Pro-Se Appellant Brief) (Direct Appeal) on the Respondent's Counsel of record. South Carolina Attorney General's Office, Alan Wilson, Attorney Wilson, Post Office Box 11549, Columbia, SC 29211. deposit in the United States mail, Postage Prepaid on MAY 19th, 2013.

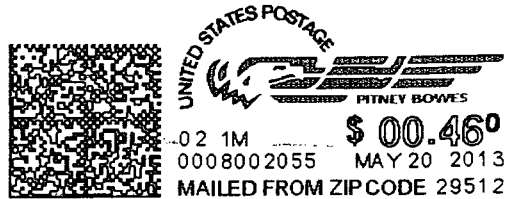
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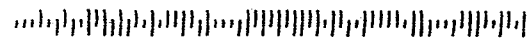


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